

CITY OF AUSTIN
Board of Adjustment/Sign Review Board
Decision Sheet

DATE: Monday, November 14, 2011

CASE NUMBER: C15-2011-0121

 _____ Jeff Jack
 _____ Michael Von Ohlen
 _____ Nora Salinas
 _____ Bryan King
 _____ Susan Morrison
 _____ Melissa Hawthorne
 _____ Heidi Goebel
 _____ Cathy French (SRB only)
 _____ Will Schnier

OWNER/APPLICANT: Lidia C, Serna

ADDRESS: 5110 GREENHEART DR

VARIANCE REQUESTED: The applicant has requested a special exception under Section 25-2-476 (B) to decrease the minimum front street setback requirement from 25 feet to 5 feet in order to maintain a carport for a single-family residence in an "SF-3-NP", Family Residence – Neighborhood Plan zoning district.

BOARD'S DECISION: POSTPONED TO January 12th, 2012 PER APPLICANT

FINDING:

1. The Zoning regulations applicable to the property do not allow for a reasonable use because:
2. (a) The hardship for which the variance is requested is unique to the property in that:
 (b) The hardship is not general to the area in which the property is located because:
3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

 Susan Walker
 Executive Liaison

 Jeff Jack
 Chairman

PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

A board or commission's decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact person listed on a notice*); or
- appearing and speaking for the record at the public hearing; and:
- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 10 days after the decision. An appeal form may be available from the responsible department.

For additional information on the City of Austin's land development process, visit our web site: www.ci.austin.tx.us/development.

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice.

Case Number: C15-2011-0121 – 5110 Greenheart Drive
Contact: Susan Walker, 512-974-2202
Public Hearing: Board of Adjustment, November 14th, 2011

James Garcia
 Your Name (please print)

I am in favor
 I object

5210 Hedgewood Dr.
 Your address(es) affected by this application

James Garcia
 Signature

11-16-11
 Date

Daytime Telephone: *703-595-6933*

Comments: _____

If you use this form to comment, it may be returned to:
 City of Austin-Planning & Development Review Department/ 1st Floor
 Susan Walker
 P. O. Box 1088
 Austin, TX 78767-1088

If you need assistance completing this application (general inquires only) please contact Susan Walker, 974-2202; 505 Barton Springs Road, 2nd Floor (One Texas Center).

CASE # C15-2011-0121
ROW # 10661060
TP-041508-06-27

CITY OF AUSTIN
APPLICATION TO BOARD OF ADJUSTMENT
GENERAL VARIANCE/PARKING VARIANCE

WARNING: Filing of this appeal stops all affected construction activity.

PLEASE: APPLICATION MUST BE TYPED WITH ALL REQUESTED INFORMATION COMPLETED.

STREET ADDRESS: 5110 Greenheart Drive

LEGAL DESCRIPTION: Subdivision - Fairview Sec 3

Lot(s) 40 Block E Outlot _____ Division _____

I/We Joselin McRabb on behalf of myself/ourselves as authorized agent for

LIDIA C SERNA affirm that on 9-30, 2011,

hereby apply for a hearing before the Board of Adjustment for consideration to:

(check appropriate items below)

ERECT ATTACH COMPLETE REMODEL MAINTAIN

a carport for a single family residence with a 5 foot front setback

in a ST-3-NP district.
(zoning district)

NOTE: The Board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

VARIANCE FINDINGS: I contend that my entitlement to the requested variance is based on the following findings (see page 5 of application for explanation of findings):

REASONABLE USE:

1. The zoning regulations applicable to the property do not allow for a reasonable use because:

Garage was too small for my van that I had when I purchased the property. The property does not allow for rear entry parking of any kind.

2. (a) The hardship for which the variance is requested is unique to the property in that:

the location of the house is in violation of sidewalk does not allow a carport to be built within existing guidelines.

- (b) The hardship is not general to the area in which the property is located because:

there many homes in the Fairview Subdivision that have the same size lots.

AREA CHARACTER:

3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

the carport does not restrict movement on the sidewalk and because there were several carport in the area at time of construction.

PARKING: (Additional criteria for parking variances only.)

Request for a parking variance requires the Board to make additional findings. The Board may grant a variance to a regulation prescribed Section 479 of Chapter 25-6 with respect to the number of off-street parking spaces or loading facilities required if it makes findings of fact that the following additional circumstances also apply:

1. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonable require strict or literal interpretation and enforcement of the specific regulation because:

2. The granting of this variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because:

3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

4. The variance will run with the use or uses to which it pertains and shall not run with the site because:

NOTE: The Board cannot grant a variance that would provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.

APPLICANT CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed Lidia C Serna Mail Address 5110 Greenheart Dr.

City, State & Zip Austin Texas

Printed LIDIA C. SERNA Phone 512-444-7667 Date 6/29/11



OWNERS CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed Lidia C Serna Mail Address 5110 Greenheart Dr.

City, State & Zip _____

Printed LIDIA C. SERNA Phone 512-444-7667 Date 6/29/11



-  SUBJECT TRACT
-  ZONING BOUNDARY

CASE#: C15-2011-0121
 LOCATION: 5110 GREENHEART DRIVE



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by the Planning and Development Review Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

Fairview Procedures

All Fairview cases will have a new 2011 PR folder if their existing PR or BP has expired.

On the first line of the "Conditions" field in the PR folder the following information will be added: "Ordinance No. 20110526-098 Life/Safety BCM 1.2.4"

If the property address received a floodplain variance (see spreadsheet labeled "Comprehensive Fairview Residential Review list"), then a post it note shall be placed on the application so an administrative hold will be placed on the building permit once it is activated in the Permit Center.

If the property address has an existing zoning setback encroachment that is to be addressed with the permit (25' front, 15' street side yard, 10' rear yard and 5' side yard), then a post note shall be placed on the application so an administrative hold will be placed on the building permit once it is activated in the Permit Center.

All zoning setback encroachments shall be noted on the second line of the "Conditions" field in the PR folder. I.e. "Carport constructed 5' into the 25' front yard setback.")

Information to tell the applicant:

Applicants in the floodplain shall be notified of the drainage easement requirement, along with the fact their final building inspection will not pass until the drainage easement has been executed, approved by the COA and recorded at Travis County. Applicants can drop off their signed and notarized drainage easements on the 12th floor under care of David Marquez or Kevin Shunk.

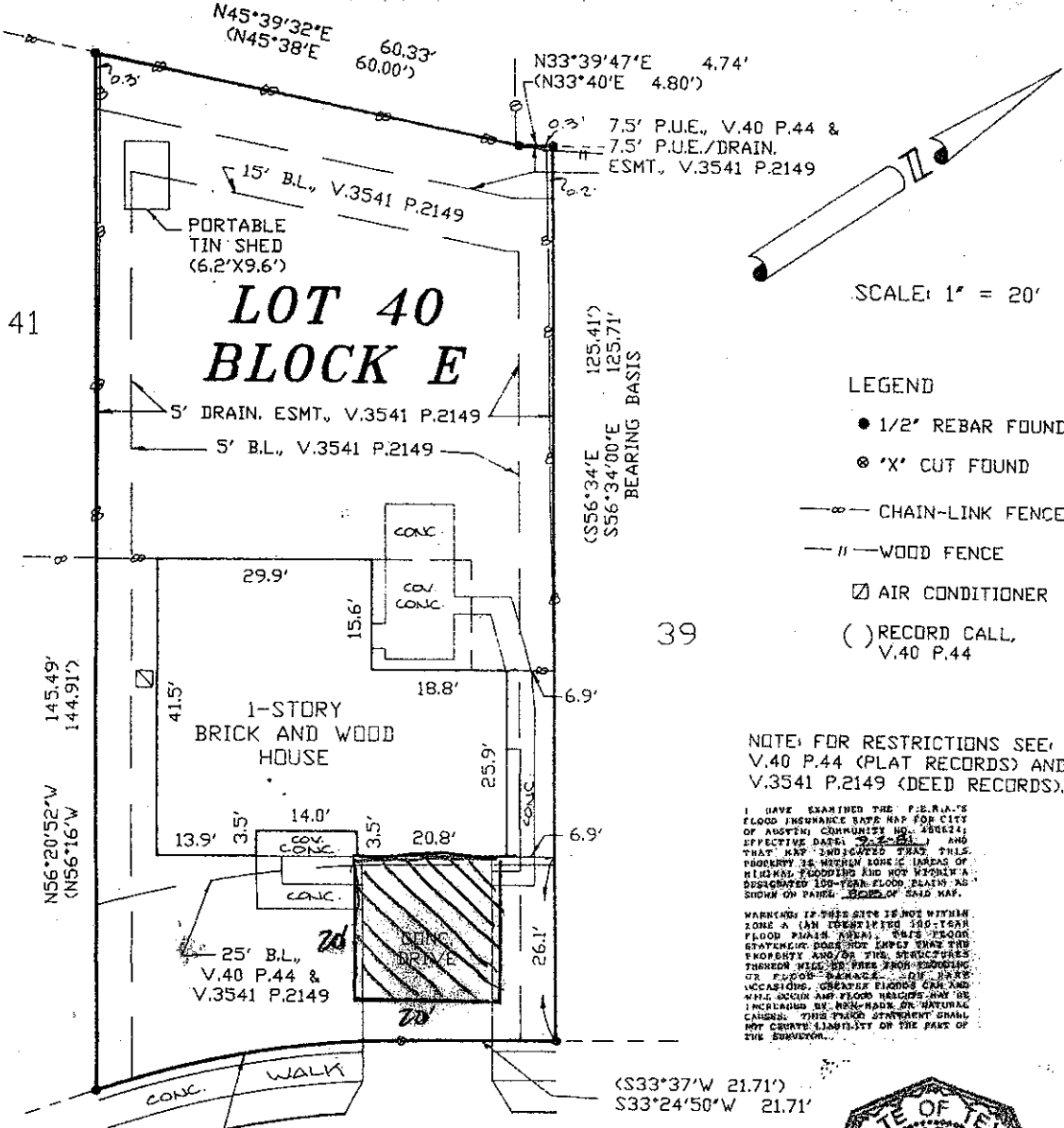
Under Ordinance No. 20110526-098 fees can be reimbursed to the applicant by the Permit Center after the building permit is finalized.

David Marquez (974-3389 or david.marquez@ci.austin.tx.us is the **City staff** contact for drainage easement questions related to Fairview.

***Special Note:** I will be notified by either Watershed Engineering for drainage easement holds or Susan Walker for Board of Adjustments variance approvals and will release all holds accordingly so the applicant can call in their final building inspection.

I, THE UNDERSIGNED, HAVE THIS DAY, MADE A CAREFUL AND ACCURATE SURVEY OF THE PROPERTY AND DAT: 5910 GREENHEART DRIV USTIN, TEXAS, BEING DESCRIBED AS FOLLOWS: LOT FORTY (40), BLOCK "E", COMMUNITY OF FAIRVIEW SECTION THREE (3), A SUBDIVISION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT OF RECORD IN VOLUME 40, PAGE 44, PLAT RECORDS OF TRAVIS COUNTY, TEXAS.

REFERENCE: OF 87494 BUYER: LIDIA C. SERNA
 SELLER: LYDIA WILSON DALLAS, INDIVIDUALLY AND AS INDEPENDENT EXECUTRIX OF THE ESTATE OF BURT EDWIN DALLAS, DECEASED



GREENHEART DRIVE

(S24°15'W A=43.22' C=43.03')
 S24°06'57"W C=43.12' R=132.18'

THE UNDERSIGNED DOES HEREBY CERTIFY TO COMMONWEALTH LAND AND TITLE COMPANY OF AUSTIN, AND BUYER AND SELLER ABOVE-NAMED THAT THIS SURVEY WAS THIS DAY MADE BY ME OR UNDER MY SUPERVISION ON THE GROUND OF THE PROPERTY DESCRIBED HEREON AND IS CORRECT, AND THAT THERE ARE NO VISIBLE DISCREPANCIES, CONFLICTS, OVERLAPPING OF IMPROVEMENTS, VISIBLE UTILITY EASEMENTS OR ROADWAYS, EXCEPT AS SHOWN HEREON, AND THAT SAID PROPERTY HAS ACCESS TO AND FROM A DEDICATED ROADWAY, EXCEPT AS SHOWN HEREON.

RALPH HARRIS SURVEYOR INC. 1406 HETHER, AUSTIN, TEXAS 78704

James M. Grant
 JAMES M. GRANT

R.P.L.S. NO. 1919 APRIL 7, 1993

Builder's and Mechanic's Lien Contract

(with Power of Sale)

Between

23 355 - 973921

1015186594

Owner: LIDIA SERNA

and

FILM CODE

("Owner", whether one or more)

Contractor: FRED TOVAR

("Contractor").

Owner and Contractor agree as follows:

00005302948

1. Property.

Owner is the owner of the following described real estate: LOT FORTY BLOCK E COMMUNITY OF FAIRVIEW, SECTION THREE, A SUBDIVISION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT OF RECORD IN VOLUME 40, PAGE 44, PLAT RECORDS OF TRAVIS COUNTY, TEXAS

("Land"). Owner warrants that Owner owns the Land in fee simple,

free of any liens or encumbrances other than the following: NO EXISTING LIENS

2. Improvements.

Contractor agrees to construct, complete and equip, on or before **OCTOBER 31 19 95** (the "Completion Date"), in good and workmanlike manner, including furnishing all labor and materials therefor, according to this Contract and the plans and specifications agreed upon by the parties hereto, the following improvements ("Improvements") on the Land.

CARPORIT COVER AND STORAGE

3. Contract Price.

On or before the date which is thirty-one (31) days after the Completion Date, Owner promises to pay to the order of Contractor the sum of \$ **2,250.00**, plus any additional sums which may be earned hereunder pursuant to Sections 8 and/or 14 hereof, or such lesser amount as may be earned hereunder ("Contract Price") for the construction of the Improvements.

Payment of the Contract Price shall be made as follows: \$ **.00** cash paid to Contractor upon execution of this contract; and

(a) If this box is checked, \$ **2,250.00** ("Indebtedness") shall be paid on or before the date which is thirty-one (31) days after the Completion Date, which Indebtedness is being transferred and assigned by Contractor to NationsBank of Texas, N.A. ("Lender"). In renewal, extension and rearrangement of the Indebtedness, but not in novation, Owner contemporaneously herewith is executing and delivering to Lender its promissory note of even date herewith payable to the order of

Lender in the principal amount of \$ **2,344.60** ("Note").

(b) If this box is checked, execution and delivery to Contractor of a Retail Installment Contract pursuant to Chapter 6 of the Texas Credit Code of even date herewith (the "Retail Installment Contract") for a time balance of \$ payable in monthly installments of \$ each, and a final installment of \$

Notwithstanding anything to the contrary in this Contract, Owner may retain the amount required by Subchapter E of Chapter 53 of the Texas Property Code during progress of the construction of the Improvements and for thirty (30) days after the "completion" of the Improvements as defined in that Subchapter.

4. Plans and Specifications.

Owner has agreed to and has approved the plans and specifications presented by Contractor.

5. Commencement.

This contract is executed, acknowledged and delivered, and the liens are created hereunder before any labor has been performed and before any material has been furnished for the construction of the Improvements.

6. Lien.

The term "Beneficiary" as used in this Contract means Contractor, unless Contractor has assigned and transferred the Obligation (defined below) to Lender, in which case the term "Beneficiary" means Lender or the subsequent holder of the Obligation at the time in question. To secure the prompt payment and performance of Owner's Obligation hereunder, Owner hereby grants a Builder's, Mechanic's, Materialman's and Laborer's Lien and security interest for the benefit of Beneficiary on the Land, and all Improvements, additions, materials, fixtures and appurtenances now thereon and hereafter placed thereon (collectively, the "Collateral"), and Owner, for the auxiliary and cumulative enforcement of the liens created hereunder, and for the further consideration, uses, purposes and trusts hereof, has **granted, sold and conveyed**, and by these presents does **grant, sell and convey** unto Michael F. Hord, Trustee, of Dallas County, Texas, and his substitutes or successors, the Collateral, and all rights, hereditaments and appurtenances in anywise appertaining or belonging to the Collateral.

7. Obligation.

The liens granted hereunder and this conveyance in trust are granted and made to secure and enforce payment and performance of Owner's obligations hereunder (including but not limited to the Note, if applicable under paragraph 3(a) above), and all extensions, renewals, increases and rearrangements thereof, and all additional amounts which may be advanced by Beneficiary for additional work and material necessary for the completion of the Improvements, and all additional sums paid out by Beneficiary which are chargeable to Owner hereunder (all of the foregoing being herein sometimes collectively called the "Obligation").

If any portion of the Obligation cannot be lawfully secured by the lien and security interest herein given and created upon the Collateral, it is agreed that the first payments made on said Obligation shall be applied to the discharge of that portion of the Obligation.

8. Alterations and Extras.

No alterations shall be made in the work shown or described by the plans and specifications, nor shall any extra work or materials be charged or paid for, unless a separate estimate for such extra work is submitted in writing by Contractor to Owner and agreed to in writing by them before the extra work is started. The additional amount to be paid for all extra work and materials so agreed to and furnished shall be a part of the Contract Price secured by the lien created by this Contract. Beneficiary, at its option and subject to the execution of such additional loan documents as it might require, may advance all or part of such additional amount, including also any cost increases or overruns agreed in writing between Owner and Contractor, and in such event the additional amount or amounts will be a part of the Obligation secured hereby. If Beneficiary elects not to advance such additional amount, Owner shall pay Contractor in cash upon completion of such extra work. All extra work done or material furnished without such agreement shall be considered as performed under the original Contract and no extra cost shall be demanded or allowed.

9. Completion.

If the Improvements fail for any reason to be completed according to this Contract, any construction contract or the plans and specifications, or if all of the labor and material used in erection thereof fails to be provided by Contractor, then Beneficiary shall have a valid and subsisting lien for the Contract Price less such amount as would be reasonably necessary to complete the Improvements according to this Contract, any construction contract and the plans and specifications. Without limitation of the preceding sentence, if Contractor has assigned the Obligation to Lender, then Lender or the subsequent holder of the Obligation at the time in question may complete the construction but shall have no obligation to do so.

10. Insurance.

Owner will at all times until the Obligation is paid in full, keep all insurable Collateral insured against the risks covered by policies of fire and extended coverage insurance and such other risks as Beneficiary may require, such insurance to be written in amounts and form acceptable to

Beneficiary, and by companies authorized to transact business in Texas, with loss made payable to Beneficiary by standard mortgage clauses (without contribution), providing written notice to Beneficiary at least ten (10) days prior to cancellation or expiration in coverage thereof, and will deliver the policies of insurance to Beneficiary promptly as issued. In the absence of written instructions to the contrary from Beneficiary, such insurance shall be not less than (i) the full insurable value of the Collateral, or (ii) the amount of the Obligation plus the outstanding principal and interest of any debt secured by a prior lien against the Collateral or any part thereof. If any part of the Collateral is located within an area that has been, or should at any time be, designated as a special flood hazard area by any federal or state official authorized to make such designation pursuant to the National Flood Insurance Act of 1968, as amended, or pursuant to any national or state flood insurance program, Owner will carry flood insurance covering the Collateral in an amount not less than the lesser of (a) the maximum limit of insurance coverage then available with respect to the Collateral pursuant to any and all national and state flood insurance programs then in effect or (b) the amount of the Obligation, plus the outstanding principal and interest balance of any debt secured by a prior lien against the Collateral or any part thereof. If Owner fails to procure any insurance required by this paragraph, Beneficiary, at its option, may procure such insurance at Owner's sole expense. All renewal and substitute policies of insurance shall be delivered at the office of Beneficiary, premiums paid, at least ten (10) days before termination of policies theretofore delivered to Beneficiary. Beneficiary, at its option, shall be entitled to receive and retain the proceeds of the insurance policies, whether paid by reason of loss, return of premiums or otherwise, applying the same upon the Obligation in such order or manner as Beneficiary shall elect. If any loss shall occur at any time when Owner shall be in default hereunder, Beneficiary shall be entitled to the benefit of all insurance held by or for any Owner, to the same extent as if it had been made payable to Beneficiary.

11. Taxes.
Owner will pay all taxes and assessments against or affecting the Collateral as the same shall become due and payable; provided, however, Owner may in good faith, in lieu of paying such taxes and assessments as they become due and payable, by appropriate proceedings contest the validity thereof; and provided that Owner shall pay such tax, assessment, penalties, interest and costs before any judgment therefor becomes final or any writ or order is or may be issued under which any of the Collateral may be sold. If Owner fails to make any such payment of taxes, assessment, penalties, interest or, in the event Owner contests the validity thereof, costs of judgment, Beneficiary may pay them at Owner's expense.

12. Maintenance.
Owner will keep the Collateral in good condition, making promptly all repairs, renewals and replacements necessary to such end, and doing promptly all else necessary to such end; but Owner will discharge all claims for labor performed and material furnished therefor, and will not suffer any lien of mechanics or materialmen to attach to any part of the Land; and will not do or suffer to be done any act whereby the value of any part of the Land or the Improvements may be lessened.

13. Awards Assigned.
All judgments, decrees and awards for injury or damage to the Land or Improvements, and all awards pursuant to proceedings for condemnation thereof, are hereby assigned in their entirety to Beneficiary, who may apply the same to the Obligation in such manner as it may elect; and Lender is hereby authorized, in the name of Owner, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree.

14. Disbursements by Beneficiary.
If Beneficiary shall pay out any money chargeable to Owner hereunder, Owner shall pay the same to Beneficiary on demand at the place where the Obligation is payable. The amount of each such payment shall be added to the Obligation and thereafter shall form a part of the same; and shall be secured hereunder, and by subrogation to all the rights of the person receiving such payment, including subrogation to all valid lien rights in the Collateral or any part thereof.

15. Construction to Improvements.
The Improvements will be constructed within building lines, will not encroach upon or overhang any easement or right-of-way or the land of others, and will not violate any applicable ordinances or regulations. All work shall be performed in a good and workmanlike manner, with due diligence and continuity until completion. No cessation of work shall be permitted for a period in excess of ten (10) days without the prior written consent of Owners. When completed, the Improvements will be of good quality, free from faults and defects and in conformance with this Contract and the plans and specifications.

16. Title to Materials, etc.
The title to all materials, appliances and equipment covered by this Contract will pass to Owner by incorporation into the Improvements free and clear of all liens, claims, security interests or encumbrances except the lien and security interest created hereunder.

17. No Liens.
Contractor warrants that it will suffer no mechanic's, materialman's, laborer's, supplier's or artisan's lien to be placed on the Collateral; and if any lien claim is filed, Contractor shall promptly cause any such lien or claim to be removed from the Collateral by payment thereof or by furnishing a bond or bonds satisfactory to the Owner to indemnify against any such lien. If requested by Beneficiary or Owner, Contractor shall pay all costs of construction, including labor, materials, and subcontractors, and shall furnish Beneficiary and Owner proper receipts and releases from any and all materialmen from whom any material is obtained by Contractor for use in the Improvements, and from all subcontractors as well as from each and all workmen who have worked thereon, to the end that no liens may be fixed upon the Collateral save and except the express liens herein created. If Owner might become liable for a lien or claim for labor or materials furnished to Contractor and primarily chargeable to Contractor, Owner may retain from payments to Contractor an amount sufficient to completely indemnify Owner against the lien or claim.

18. Remedies.
If Owner defaults in payment of any of the Obligation when due or declared due, or in the timely performance of any covenant herein or in the Note or Retail Installment Contract, or if a default shall occur as provided elsewhere in this Contract or, if Beneficiary is Lender or a subsequent holder of the Obligation, a default shall occur under any loan agreement or other document (each a "Loan Document") executed by Owner in favor of Beneficiary, the Trustee, at the request of Beneficiary, may sell all or any portion of the Collateral, at public auction, to the highest bidder for cash at the County Courthouse in the County in Texas in which the above-described tract(s) of Land or any part thereof is situated, as herein described, between the hours of 10:00 o'clock A.M. and 4:00 o'clock P.M. on the first Tuesday of any month, in compliance with the requirements of Section 51.002, Texas Property Code, as then amended, after giving notice of said sale, in compliance with said Section, as then amended.

Owner hereby jointly and severally authorizes and empowers the Trustee to sell all or any portion of the Collateral together or in lots or parcels, as the Trustee may deem expedient, and to execute and deliver to the purchaser or purchasers of such Collateral good and sufficient deeds of conveyance of fee simple title or of lesser estates, and bills of sale and assignments, with covenants of general warranty made on behalf of the Owner. In no event shall the Trustee be required to exhibit, present or display at any such sale any of the personality comprising any of the Collateral to be sold at such sale. The Trustee making such sale shall receive the proceeds thereof and shall apply the same first to the reasonable expense of such sale; second, to the remaining unpaid balance of the Obligation, in such order or manner as the Beneficiary shall elect; and the residue, if any, shall be paid to the person or persons legally entitled thereto. Payment of the purchase price to the Trustee shall satisfy the liability of the purchaser at such sale therefor, and such person shall not be bound to look after the application thereof.

If sale is made because of default in the payment of any installment, or a part of an installment, such sale may, at Beneficiary's election, be made subject to the unmatured part of the Obligation, and it is agreed that such sale, if so made, shall not in any manner affect the unmatured part of the Obligation, but as to such unmatured part, this Contract shall remain in full force and effect as though no sale had been made under the provisions of this paragraph.

Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Obligation and without impairing the right and powers of sale provided elsewhere in this agreement. Beneficiary may bid and become the purchaser of all or any part of the Collateral at any trustee's or foreclosure sale hereunder being the highest bidder, and Beneficiary shall have the right to credit upon the amount of Beneficiary's successful bid, to the extent necessary to satisfy such bid, all or any part of the Obligation in such manner and order as Beneficiary may elect.

With respect to any portion of the Collateral which constitutes personal property or fixtures, including, without limitation, any consumer goods, governed by the Uniform Commercial Code of the State of Texas (the "Code"), this Contract shall constitute a security agreement between Owner as Debtor and Beneficiary as Secured Party, and Owner hereby grants to Beneficiary a security interest in such portion of the Collateral. Cumulative of all other rights of Beneficiary hereunder, Beneficiary shall have all of the rights conferred upon secured parties by the Code. Owner will execute and deliver to Beneficiary all financing statements that may from time to time be required by Beneficiary to establish and maintain the validity and priority of the security interest of Beneficiary, or any modification thereof, and all costs and expenses of any searches reasonably required by Beneficiary. Beneficiary may exercise any or all of the remedies of a secured party available to it under the Code with respect to such property, and it is expressly agreed that, if upon default, Beneficiary should proceed to dispose of such property in accordance with the provisions of the Code, ten (10) days' notice by Beneficiary to Owner shall be deemed to be reasonable notice under any provision of the Code requiring such notice; provided, however, that Beneficiary may at its option dispose of such property in accordance with Beneficiary's rights and remedies with respect to the real property pursuant to the provisions of this Contract in lieu of proceeding under the Code.

Notwithstanding any seemingly contrary provision of this Contract or any other Loan Document, if any person executing this Contract is a "consumer" as defined in Regulation AA of the Board of Governors of the Federal Reserve System, no lien or security interest created or evidenced by this Contract shall extend to, cover or affect "household goods" of such person as also defined therein.

The items of Collateral described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that those goods this Contract shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the County in which the Land is situated. Information concerning the security interest created by this instrument may be obtained from the Secured Party, at the address of Beneficiary stated above. The mailing address of Owner, as Debtor, is as stated above or in any other Loan Document.

The remedies provided herein and in any other Loan Document are cumulative of each other and of any and all other rights and remedies provided herein, and Trustee and Beneficiary shall, in addition to the rights and remedies provided herein or in any other Loan Document, be deemed to have all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the Obligation and the enforcement of any such other Loan Document or provided for by law or in equity shall not prevent the concurrent or subsequent exercise of any such other right or remedy or remedies. Beneficiary may resort to any security given by this Contract or to any other security to secure the payment of the Obligation, in whole or in part, and in such portions and in such order as may seem appropriate to Beneficiary with respect to the Obligation, any guarantor or surety thereof or the Collateral, shall in anywise be

...the rights of law pert... to the marshaling of assets, sale... in reverse order of alienation... administration... of the... of this Contract... different resort for collection, or the right of Beneficiary under t... of this Contract... in preference to every other claimant, whatever.

...the proceeds of sale of the Collateral in preference to every other claimant, whatever.

...hereunder and at the time of such sale, Owner or Owner's heirs, devisees, representatives, successors or assigns are... the tenant of the purchaser at such sale, which tenancy shall... to the purchaser; and to the extent permitted by applicable law, the purchaser at such sale shall, notwithstanding any... to demand immediate possession following the sale or to permit the occupants to remain... upon demand, the purchaser shall be entitled to institute and... (such as an action for forcible detainer) in any court having jurisdiction.

Trustee.
 If the Trustee shall die or become disqualified from acting in the execution of this trust, or shall fail or refuse to execute the same when requested by Beneficiary to do so, or if, for any reason, Beneficiary shall prefer to appoint a substitute Trustee to act instead of the Trustee named herein, Beneficiary shall have full power to so appoint, by written instrument, a substitute Trustee and, at Beneficiary's election, several substitute Trustees in succession who shall succeed to all of the estate, rights, powers and duties of the original Trustee named herein. Such appointment may be executed by any authorized agent of Beneficiary, and if Beneficiary is a corporation or association and such appointment is executed on its behalf by any officer of such corporation or association, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or association. All references in this Contract to "Trustee" shall be deemed to refer to the Trustee (including any substitute appointed as herein provided) from time to time acting hereunder.

The Trustee shall not be liable for any error or judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever (including Trustee's negligence), except for Trustee's gross negligence or willful misconduct. The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by him hereunder. Owner hereby ratifies and confirms any and all acts which the herein named Trustee or his successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof. Owner will reimburse Trustee for, and save him harmless against, any and all liability and expenses which may be incurred by him in the performance of his duties. The foregoing indemnity shall not terminate upon discharge of the Obligation or foreclosure, or release or other termination, of this Contract.

20. Prior Liens.
 Owner expressly covenants and agrees to pay timely and prior to delinquency all installments of principal and interest on debt secured by any and all prior liens and encumbrances against the Collateral or any part thereof and to perform and observe all covenants contained in any deed of trust or other instrument creating such lien or encumbrance. It is agreed that any default under the terms and provisions of such deed of trust or other lien instrument shall constitute a default hereunder which shall entitle the Beneficiary, at its election but without obligation to do so, and without prior notice, to exercise any right or remedy provided herein or in the Note, including but not limited to the rights to declare the unpaid balance of principal of, and accrued interest on, the Obligation or any part thereof to be immediately due and payable (and upon such declaration the same shall be immediately due and payable) and to request the Trustee to sell the Collateral as provided in Paragraph 18 hereof. In addition, the Beneficiary may, at its election, but without any obligation to do so, pay off and discharge any debt, or part thereof, secured by any prior lien, and upon payment thereof shall be subrogated to the liens and rights of the holder of such prior lien debt to the extent of the amount so paid. All amounts so paid shall become a part of the Obligation and shall be secured by the lien of this Contract, which shall be cumulative of all liens and rights to which Beneficiary shall become subrogated.

21. Assignment of Rents.
 As additional security for the payment of the Obligation, Owner hereby assigns to Beneficiary all rents received by or due to Owner deriving from the Collateral, including all royalties and other consideration payable by any lessee under any lease or other agreement now or hereafter existing by which any person other than Owner has or acquires any right to occupy or use the Collateral or any part thereof or interest therein. Until the occurrence of a default, Owner is granted the privilege to collect and retain the rents, but upon receipt from Beneficiary or notice that a default exists hereunder, each lessee is hereby directed to pay to Beneficiary rents thereafter accruing. Receipt by Beneficiary shall be a release of each lessee to the extent of amounts so paid. Beneficiary shall not be liable for its failure to collect or exercise diligence in the collection of rents, but shall be accountable only for rents actually received. Rents so received shall be applied by Beneficiary first to the remaining unpaid balance of the Obligation, in such order or manner as Beneficiary shall elect, and the residue, if any, shall be paid to the person or persons legally entitled thereto.

22. Transfer of the Land.
 If all or any part of the Land or any interest in it is sold or transferred without Beneficiary's prior written consent, Beneficiary may, at its option, declare the unpaid balance of principal of, and accrued interest on, the Obligation or any part thereof to be immediately due and payable (and upon such declaration the same shall be immediately due and payable). However, this option shall not be exercised by Beneficiary if exercise is prohibited by federal law as of the date of this Contract.

23. Compliance with Usury Laws.
 It is the intent of Owner and Beneficiary and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Beneficiary and Owner (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contacted for, charged, chargeable, or received under this Contract, the Note or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Beneficiary shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Obligation in the inverse order of its maturity and not to the payment of interest, or refunded to Owner or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate maturity of the Obligation or any part thereof does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Beneficiary does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Beneficiary shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean the laws of the State of Texas or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

24. Miscellaneous.
 If more than one person executes this Contract as Owner, the Obligations of such persons hereunder shall be joint and several. All of the covenants and agreements hereunder taken to be performed by and the rights conferred upon the respective parties shall be binding upon and inure to the benefit of said parties and their respective heirs, executors and administrators, successors and assigns.

This Contract constitutes a "construction mortgage" as defined in Section 9.313 of the Texas Business and Commerce Code to the extent that it secures an obligation incurred for the construction of the Improvements, including the acquisition cost of the Land.

The Owner acknowledges receipt of a copy of this Contract with all blanks completed.

Executed and dated as of June 21, 1995.

IMPORTANT NOTICE: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

Owner Lidia C. Serna
 Lidia Serna

Owner _____
 Contractor Fred Tovar
 Fred Tovar

Contractor's Address:
 Fred Tovar
 6810 Montana
 Austin TX 78741

By _____
 Name Owner
 Title _____
 (If Contractor is a corporation, type in name of corporation in first line, and execute by authorized signer on second line.)
 (Notice: If this Contract is being assigned to Lender, Contractor must complete the Assignment of Lien and appropriate acknowledgement below.)

REAL PROPERTY RECORDS
 TRAVIS COUNTY, TEXAS

12470 0037

Assignment of ... n, Rights, Liens and Security Interests

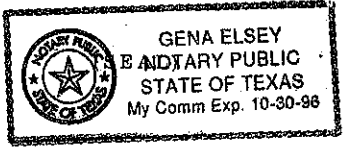
The undersigned Contractor, for and in consideration of the sum of Ten (\$10.00) Dollars cash and other ... paid by NationsBank of Texas, N.A. ("Lender"), whose address is 901 Main Street, Dallas, Texas 75202, has ... and does by these presents sell, convey and assign to Lender all of the Obligation described in the foregoing Bulk ... Contract with Power of Sale ("Contract") and all instruments, if any, evidencing the Obligation, together with all the ... assignments and security interests securing the same, but Lender does not assume any obligation imposed upon Contractor ... this Contract and Lender shall not be held liable for the performance or breach thereof by Contractor. All Mechanic's Liens or ... whether contractual, statutory or constitutional, on the Collateral which have arisen or may arise for the benefit of Contractor because ... work performed or materials furnished, are hereby agreed to be, and shall at all times continue to be, subject and subordinate in each and ... every respect to all of the rights, powers, liens and security interests held by or for the benefit of Lender (and any subsequent holder of the ... Obligation) under this Contract, or at law or in equity or otherwise, and to any and all increases, renewals, modifications, extensions and ... rearrangements thereof from time to time.

After Filing Return To:
LBriones
NationsBank
PO Box 908
Austin TX 78781

Fred Tovar
Contractor Fred Tovar
By _____
Name Owner
Title _____

(Contractor's Individual Acknowledgement)

The State of Texas §
County of Travis §
This instrument was acknowledged before me on this the 28 day of June, 1995
by Fred Tovar



Gena Elsey
Notary Public, State of Texas

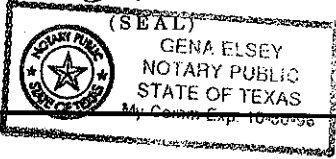
(Corporate Acknowledgement)

County of _____ §
This instrument was acknowledged before me on this the _____ day of _____, 19____
by _____ of _____, a _____ corporation,
on behalf of said corporation.

(SEAL) _____
Notary Public, State of Texas

(Individual Acknowledgement)

The State of Texas §
County of Travis §
This instrument was acknowledged before me on this the 28 day of June, 1995
by Jana Jerna



Gena Elsey
Notary Public in and for the State of Texas

(Individual Acknowledgement)

The State of Texas §
County of _____ §
This instrument was acknowledged before me on this the _____ day of _____, 19____
by _____

(SEAL) REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS
Notary Public in and for the State of Texas

12470 0038